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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/772,738	02/04/2004	Kevin Tucek	206-032	5639
33354	7590	10/12/2005		
ETHERTON LAW GROUP, LLC 5555 E. VAN BUREN STREET, SUITE 100 PHOENIX, AZ 85008			EXAMINER JOHNSON III, HENRY M	
			ART UNIT	PAPER NUMBER
			3739	

DATE MAILED: 10/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/772,738

Applicant(s)

TUCEK ET AL.

Examiner

Henry M. Johnson, III

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 September 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 6 and 18 is/are allowed.
- 6) ☐ Claim(s) 2-5 and 7-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 June 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

The indicated allowability of claim 2 is withdrawn in view of the newly discovered reference to Hofmann. Also, the priority to the previous application has not been perfected. Accordingly, the finality of the previous office action is withdrawn. Rejections based on the newly cited reference follow.

The amendment filed 15 September 2005 has been entered.

Priority

Claim for priority is not proper. Per 37 CFR 1.78:

"If the later-filed application is a nonprovisional application, the reference required by this paragraph must be included in an application data sheet (§ 1.76), or the specification must contain or be amended to contain such reference in the first sentence following the title." The specification should be amended to properly position the cross-reference information and to properly identify the previous application as a continuation-in-part.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any

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evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 2, 3-5, 7-10, 12 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Application Publication US 2002/0138119 to Angeley et al. in view of U.S. Patent 4,984,892 to Hofmann. Angeley et al. teach a laser scanning handpiece for delivering treatment to tissue (abstract) using galvanometer mirrors driven by electronic scanning instructions (controller) for scanning the output beam (paragraph 0051). It is inherent that electronic control provides the capability to produce intricate patterns (shape of treatment zone) and variable energy distributions (based on scan rate). Angeley et al. disclose two beams (implying two sources), one a visible beam for aiming and the other for treatment (paragraph 0036). A square waveguide provides a square beam shape (Fig. 4). Wand and handpiece are considered equivalents. Angeley et al. does not disclose the use of a single optical element for scanning the output beam. Hofmann teaches an apparatus for the optical scanning of a spherical or semispherical space. An optically deflecting element, such as a mirror or a double prism is mounted for rotation about the optical axis which considered to be the primary axis, and about a secondary axis (Col. 3, lines 17-21). The apparatus is basically capable of scanning the entire volume of a hemisphere (Col. 6, lines 20-24). Beam scanners using a single optical element are common in the art (U.S. Patent 6,900,916; U.S. Patent 5,252,816; U.S. Patent Application Publication US 2004/0212863) and therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to use the single optical element of Hofmann in the invention of Angeley et al. as an alternative scanning means ~~to~~ achieve a hemispherical coverage.

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Claim 11 and 13-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Application Publication US 2002/0138119 to Angeley et al. in view of U.S. Patent 4,984,892 to Hofmann ~~ix~~ as applied to claim 2 above, and further in view of U.S. Patent 5,879,376 to Miller. Angeley et al. and Hofmann are discussed above, but do not disclose the use of a semiconductor laser or beam parameters. Miller teaches a surgical laser system for tissue treatment with a handpiece. A commercial scanner may replace the standard handpiece and serve to contiguously place treatment spots on the skin. This would allow for the rapid uniform coverage of large treatment areas with any particular spot size (Col. 9, lines 48-55). The laser may be provided by a semiconductor diode (Col. 5, line 10). Two lasers may be provided, a treatment beam and a red, visible, aiming beam (Col. 9, Lines 30-42). Laser control is implicit in that pulse repetition rates of from 1-20 Hz are disclosed. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use the semiconductor sources and operating parameters as taught by Miller in the invention of Angeley et al. as modified by Hofmann as semiconductor devices are well known as beam sources, control of beam parameters is not only known but required to achieve specific treatments and the concept of an aiming beam used with a treatment beam is pervasive in the art.

Allowable Subject Matter

Claims 6 and 18 are allowed.

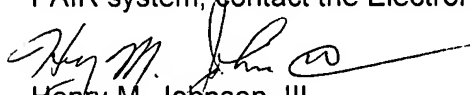
Conclusion

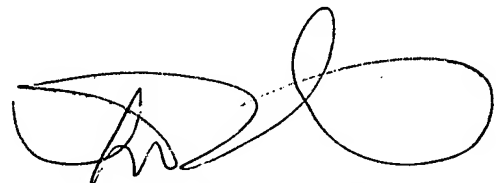
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Henry M. Johnson, III whose telephone number is (571) 272-4768. The examiner can normally be reached on Monday through Friday from 6:00 AM to 3:00 PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda C. Dvorak can be reached on (571) 272-4764. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Henry M. Johnson, III
Patent Examiner
Art Unit 3739



LINDA C. M. DVORAK
SUPERVISORY PATENT EXAMINER
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